

GENDER EQUALITY:

THE STRUGGLE IN COUNTRIES WITH RESERVATIONS TO CEDAW

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Introduction:

In Asia Pacific region which has been the nursery of world religions of successive millennia, discrimination against women and girls is endemic in all cultures. Historically women have been accorded a secondary position and role in the social hierarchy and in many cases they have been denied basic rights, whether it is in family, workplace or society in general. Patriarchal mindset dominates everywhere even in the case of educated men. Gender discriminatory practices are taken for granted with impunity. 'Son Preference' and consequent disfavouring of female child are universally practiced. Foeticide and infanticide are too common in spite of prohibitory legislations against them. There are cases where Indian villages have no female brides for their male grooms due to the elimination of girl children. Increasing crimes against women in numerous forms such as acid attacks, honour killings, rape followed by murder, bride-burning for dowry, battering of women in the household etc are rampant in the region. Gender-based injustice in the families is omnipresent from womb to tomb. Girl children are neglected and underfed, left to take care of domestic chores, denied of schooling. Child marriages, widow's ill-treatment, Sati, stigma and discrimination against HIV+ women and girl children, sexual assaults and abuse, sexual harassment at workplace are other forms of discrimination. This situation calls for drastic remedial action through the instrumentality of CEDAW.

"Violence against women is never acceptable, never excusable, never tolerable".

- **Ban Ki-moon, Secretary General, United Nations.**

Violence against women (VAW) and girls occurs in both private and public spaces. It takes many forms, ranging from domestic abuse to rape, psychological torture, trafficking, sexual exploitation and harmful practices among others. Acts of violence take place in a variety of settings (households, streets, schools, workplaces, conflict situations) and affect a cross-section of groups (including rural-urban, rich/poor, young/adult, migrant, displaced, indigenous, disabled and HIV-positive women). Ensuring effective responses requires that laws, policies, services and data collection efforts recognize and address the different manifestations of violence and strategies to combat, accordingly, based on an understanding of the specific contexts in which they occur.

What is CEDAW?

Gender disparity remains one of the dominant concerns of women in the world. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted in 1979 by the UN General Assembly, is often described as an international Bill of Rights for Women. Consisting of a preamble and 30 articles, the Convention aims to promote women's equal status

and rights in the areas of domestic violence, reproductive rights, legal and political rights, as well as calls for equal access and opportunities to education, health and employment.

The Convention is the only human rights treaty which affirms the reproductive rights of women and targets culture and tradition as influential forces shaping gender roles and family relations. It affirms women's rights to acquire change or retain their nationality and the nationality of their children. State parties also agree to take appropriate measures against all forms of traffic in women and exploitation of women.

Why does the CEDAW Convention allow Reservations from State Parties?

It has been recognized that some rights may take more time to be realized than others. Some economic, social and cultural rights, for example, may require more time to be realized, because they require a greater investment of resources, or more substantial structural changes. Some countries at the time of ratification may have in place laws, traditions, and religious or cultural practices that may discriminate against women – time may be required to remove discriminatory provisions within the law, or change discriminatory behaviour. Where a State cannot be realistically expected to achieve a right immediately, its obligation is understood to be 'progressive', and can be satisfied by genuine efforts that produce incremental progress towards realization of the right.

With this in mind, CEDAW permits ratification subject to reservations, provided that the reservations are not incompatible with the object and purpose of the Convention. Reservations to two articles in particular – Articles 2 and 16 – are considered impermissible, since these are considered to be core provisions of the Convention. Nonetheless, numerous countries have entered reservations to these two articles, on the grounds of incongruent national law, tradition, religion or culture. The CEDAW Committee continues to express its concern over these reservations, and urge States parties to remove them and thereby comply with general principles of international law.

Reservations

When governments become state parties to a convention, they can identify that they will not be bound to particular elements of that treaty. This is known as "entering a reservation" and in the CEDAW convention this is permitted under Article 28. Sometimes states parties can also make declarations. These have the same effect as reservation. Reservations are meant to be temporary so that a state party can take steps to remove obstacles to the implementation of the articles it has reserved.

More than 160 countries have signed their commitment to the CEDAW Convention, some countries with reservations to the CEDAW Articles.

The Convention permits ratification subject to reservations, provided that the reservations are not incompatible with the object and purpose of the Convention. Some State parties that enter reservations to the Convention do not enter reservations to analogous provisions in other human rights treaties. A number of States enter reservations to particular articles on the ground that national law, tradition, religion or culture are not congruent with Convention principles, and

purport to justify the reservation on that basis. Some States enter a reservation to article 2, although their national constitutions or laws prohibit discrimination. There is therefore an inherent conflict between the provisions of the State's constitution and its reservation to the Convention.

CEDAW Reservations – An Overview

1. BANGLADESH

"Bangladesh does not consider as binding upon itself the provisions of article 2, as they conflict with Sharia law based on Holy Quran and Sunna".

In Bangladesh a CEDAW Forum was formed with dedicated individuals and organizations, among which Bangladesh National Women Lawyers Association, Mahila Parishad and Wari Pokkho frontlined the CEDAW Forum. Workshops, Trainings were conducted to give awareness on how to incorporate journalist and ordinary citizens to raise public awareness on CEDAW Convention with emphasis on Article 2, 13.1(a), 16 1(a) & (f) into their domestic laws.

A unified effort was more effective than several isolated approaches. Thus the women learned after proving their advocacy efforts. They were successful in urging the government to withdraw its reservations on Articles 13 (a) and 16 1 (f).

2. INDIA

With regard to article 29, Para 1

According to the 2010 Human Development Report released by the United Nations Development Programme recently, India ranks lower than all other countries in South Asia, except Afghanistan.

Maternal mortality in India is 450 deaths per 100,000 live births; the figure for Pakistan is 320. On adolescent fertility, India aged 15-19. Pakistan fares better at 45.

Even on parliamentary participation India fares worse than Pakistan, Nepal and Bangladesh. However women's participation in the labour force which is 36% places India in a slightly better position.

Communal violence in Gujarat which took place in 2002, inflicted violence against women and girls, murder, gang rape, forced nudity, mutilation of breast and other body parts and other forms of sexual violence which were human right violations. The CEDAW committee in its observations in the 47th session in October 2010 concluded that the states parties are under an obligation to act with due diligence to investigate all crimes including that of sexual violence perpetrated against women and girls, to punish perpetrators and to provide adequate compensations without delay and the accountability of the state to protect its women and girls initiatives of National State Human Rights Commission/ National and state commission for Women to protect the rights of women from discrimination have been noted.

The committee also recommended speedy redressal of the case, witness protection and free legal aid for women. Also recommended for law reforms- Amendment of Indian Penal Code and Criminal Procedure Code. through the Criminal Law (Amendment) Bill 2010. E.g.: Amendment of Section 375 IPC.

3. PAKISTAN

"The Government of Islamia Republic of Pakistan declares that it does not consider itself bound by Para 1 of article 29 of the Convention".

4. INDONESIA

Article 29, Para 1

"The Government of the Republic of Indonesia does not consider itself bound by the provisions of article 29, paragraph 1 of this Convention and takes the position that any dispute relating to the interpretation or application of the Convention may only be submitted to arbitration or to the International Court of Justice with the agreement of all the parties to the dispute."

5. MALAYSIA

"The Government of Malaysia has partially withdrawn its reservation in respect of article 2(f), 9(i), 16(b) (d) (e) and (h) (in 1998).

In relation to article 11, Malaysia interprets the provisions of this article as a reference to the prohibition of discrimination on the basis of equality between men and women only.

6. MALDIVES

Reservations:

"1. The Government of the Republic of Maldives expresses its reservation to article 7 (a) of the Convention, to the extent that the provision contained in the said paragraph conflicts with the provision of article 34 of the Constitution of the Republic of Maldives.

2. The Government of the Republic of Maldives reserves its right to apply article 16 of the Convention concerning the equality of men and women in all matters relating to marriage and family relations without prejudice to the provisions of the Islamic Sharia, which govern all marital and family relations of the 100 percent Muslim population of the Maldives."

7. REPUBLIC OF KOREA

Para 1 of article 16

Reservation:

"1. The Government of the Republic of Korea does not consider itself bound by the provisions of article 9 of the Convention on the Elimination of All Forms of Discrimination against Women of 1979.

"2. Bearing in mind the fundamental principles as embodied in the said Convention, the Government of the Republic of Korea has recently established the Korea Women's welfare and social activities. A committee under the chairmanship of the prime minister will shortly be set up to consider and coordinate overall policies on women.

"3. The Government of the Republic of Korea will make continued efforts to take further measures in line with the provisions stipulated in the Convention."

Upon ratification:

Reservation:

"The Government of the Republic of Korea, having examined the said Convention, hereby ratifies the Convention considering itself not bound by the provisions of [...] sub-paragraph [...] (g) of paragraph 1 of Article 16 of the Convention."

8. SINGAPORE

Reservations:

(1) In the context of Singapore's multi-racial and multi-religious society and the need to respect the freedom of minorities to practise their religious and personal laws, the Republic of Singapore reserves the right not to apply the provisions of articles 2 and 16 where compliance with these provisions would be contrary to their religious or personal laws.

(2) Singapore is geographically one of the smallest independent countries in the world and one of the most densely populated. The Republic of Singapore accordingly reserves the right to apply such laws and conditions governing the entry into, stay in, employment of and departure from its territory of those who do not have the right under the laws of Singapore to enter and remain indefinitely in Singapore and to the conferment, acquisitions and loss of citizenship of women who have acquired such citizenship by marriage and of children born outside Singapore.

(3) Singapore interprets article 11, paragraph 1 in the light of the provisions of article 4, paragraph 2 as not precluding prohibitions, restrictions or conditions on the employment of women in certain areas, or on work done by them where this is considered necessary or desirable to protect the health and safety of women or the human foetus, including such prohibitions, restrictions or conditions imposed in consequence of other international obligations of Singapore and considers that legislation in respect of article 11 is unnecessary for the minority of women who do not fall within the ambit of Singapore's employment legislation.

(4) The Republic of Singapore declares, in pursuance of article 29, paragraph 2 of the Convention that it will not be bound by the provisions of article 29, paragraph 1.

9. THAILAND

Article 16 and article 29, Para 1

Reservations:

The Royal Thai Government does not consider itself bound by the provisions of [...] article 16 and article 29, paragraph 1, of the Convention.

Challenges and Opportunities

- Awareness on CEDAW
- Network of women's groups / NGO's/ civil society organizations could act as advocacy groups putting pressure on the government to formulate policies and implementation of CEDAW provisions.
- Women should be vigilant and participate in decision making process, including political decision making.
- Government's action to involve women groups/NGO's/ Civil Society Organizations in the process of preparation of country reports, planning and even adopting **gender budgeting** and administering it.
- Accountability- financial and social audit.
- Involvement of women's group/NGO's in the law reform process.
- Trauma counseling / Management
- Fast track counts for speedy justice.
- Sensitization of Police and judiciary.
- Pro-active measures.
- Networking with like-minded organizations and media.
- Undertake study, collection and analysis of data.
- Research and documentation
- Empowerment of women and girls
- Allotment of Resources.

What can Education Unions do to ensure that the treaty is used as a tool for women's advocacy?

Economic recession, climate change, food insecurity, governance deficit, corruption and scams, price rise are prevailing in the global scenario. These will adversely impact welfare and status of women and girl children.

We can see many countries have reservations regarding CEDAW Articles for various reasons and justifications of their own. Unless these reservations are sorted out it will be impossible to make CEDAW a reality and to negate discrimination against women. The question is how

teacher unions can participate in the process of reducing reservations. Some possible means in this direction can be identified as follows:

Teacher Unions may prepare a time bound plan to confront the reservations within a specified framework of action, say three years, five years or ten years.

Dialogue can be initiated with leaders and institutions of varied religions and cultures which block CEDAW realization.

The members of parliament, state legislators and the ruling hierarchy need to be sensitized on the necessity of ending discrimination and creating the necessary legislations.

Social networking can be fruitfully utilized to generate public awareness to generate public awareness and eventual unanimity on acceptance of CEDAW. The younger generation of school and university students as well as non-student youth should be exposed to the importance of CEDAW. Instances of manifest discrimination and violence against women should be taken up by media in a timely manner leading to massive campaigns for restoring the human dignity of victims of oppression.

Within the teacher unions themselves rules should be framed to establish just quotas for women in decision making bodies and leadership positions.

In all international fora the women's rights should be ensured at every stage in furtherance of CEDAW. In discussions and documents woman-friendly terms and language should be insisted upon (eg: humankind).

Also need to encourage study, documentation and research on various issues related to women and girls.

Conclusion

In a gendered society, the need for educating both men and women about the concept of gender is of paramount importance. Gender mainstreaming is a globally accepted strategy for promoting gender equality. Women's perspective in policies, programmes and projects will prove to be the roadmap to equality.

